

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN CASSERD,

Plaintiff,

Case No. C14-451-RAJ-BAT

V.

CAROLYN W. COLVIN, Commissioner of
Social Security.

Defendant.

REPORT AND RECOMMENDATION

Susan Ann Casserd seeks review of the denial of her Disability Insurance Benefits application. She contends the ALJ erred by improperly rejecting her testimony, and rejecting the medical opinions of Dr. Arne Anderson, M.D., and Dr. Marie Boudreux, M.D. Dkt. 14. As discussed below, the Court recommends the Commissioner's decision be **AFFIRMED** and this case be **DISMISSED** with prejudice.

BACKGROUND

Ms. Casserd is currently 57 years old, has at least a high school education, and has worked as a personnel clerk, receptionist, personal life coach, and file clerk. Tr. 46, 85-86, 119. On November 12, 2010, she applied for benefits, alleging disability as of December 1, 2009. Tr. 18. Her applications were denied initially and on reconsideration. *Id.* The ALJ conducted a

1 hearing on January 6, 2012, finding Ms. Casserd not disabled. Tr. 18-33. As the Appeals
 2 Council denied Ms. Casserd's request for review, the ALJ's decision is the Commissioner's final
 3 decision. Tr. 1-6.

4 **THE ALJ'S DECISION**

5 Utilizing the five-step disability evaluation process,¹ the ALJ found:

6 **Step one:** Ms. Casserd had not engaged in substantial gainful activity since April 1,
 7 2009, the amended alleged onset date.

8 **Step two:** Ms. Casserd had the following severe impairments: degenerative disc disease
 9 of the lumbar spine, status/post two surgical interventions, heel valgus bilaterally and
 10 hallux valgus on the right, status/post bilateral bunionectomies, major depressive
 11 disorder, and anxiety disorder NOS.

12 **Step three:** These impairments did not meet or equal the requirements of a listed
 13 impairment.²

14 **Residual Functional Capacity:** Ms. Casserd had the residual functional capacity to
 15 perform work as follows: she could lift and carry ten pounds occasionally and frequently;
 16 stand and/or walk two hours in an eight-hour workday; she must have the option to sit or
 17 stand at will; she cannot climb ladders, rope, or scaffolding, and can occasionally climb
 18 ramps or stairs; she can understand, remember, and perform at least three-step
 19 instructions; and she can interact appropriately with coworkers, supervisors, and
 20 members of the public.

21 **Step four:** Ms. Casserd could perform her past work as personnel clerk and reception
 22 clerk, as they are generally performed and as Ms. Casserd actually performed them.

23 Tr. 18-33.

DISCUSSION

A. The ALJ Did Not Err in Evaluating Ms. Casserd's Credibility

1. *Relevant Standard*

Ms. Casserd contends the ALJ erred in her adverse credibility determination because she
 failed to provide "clear and convincing" reasons for rejecting her testimony. Dkt. 14 at 6. The

¹ 20 C.F.R. §§ 404.1520, 416.920.

² 20 C.F.R. Part 404, Subpart P, Appendix 1.

1 Commissioner disagrees, arguing that the Social Security Administration’s (“Agency”) rules at
 2 most require substantial evidence. (*citing Monjaraz-Munoz v. INS*, 327 F.3d 892, 895 (9th Cir.
 3 2003)). Dkt. 15 at 2. The Commissioner’s position is foreclosed as contrary to Ninth Circuit
 4 precedent. This Circuit has

5 consistently held that where the record includes objective medical
 6 evidence establishing that the claimant suffers from an impairment
 7 that could reasonably produce the symptoms of which [she]
 8 complains, an adverse credibility finding must be based on ““clear
 9 and convincing reasons.”” *Lingenfelter v. Astrue*, 504 F.3d 1028,
 10 1036 (9th Cir.2007) (*quoting Smolen v. Chater*, 80 F.3d 1273,
 11 1281 (9th Cir.1996)). The only time this standard does not apply is
 12 when there is affirmative evidence that the claimant is malingering.
 13 *Greger v. Barnhart*, 464 F.3d 968, 972 (9th Cir.2006); *Morgan v.*
 14 *Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir.1999).

15 *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1160 (9th Cir. 2008). Moreover, the
 16 Ninth Circuit recently denied the Agency’s attempts to undermine the clear and convincing
 17 standard, stating the suggestion “lacks any support in precedent and must be rejected.” *Garrison*
 18 *v. Colvin*, No. 12-15103, 2014 WL 3397218 at *16, n.18 (9th Cir. July 14, 2014) (rejecting
 19 Agency’s argument that the Court should apply a standard lower than clear and convincing in
 20 reviewing ALJ’s evaluation of claimant’s testimony where there was no evidence of
 21 malingering). This Court is bound by the law of the Ninth Circuit. Accordingly, the Court finds
 22 that the ALJ’s adverse credibility determination must be based on clear and convincing reasons.
 23

2. *Inconsistency with the Medical Record*

24 The ALJ discounted Ms. Casserd’s credibility because her medical records were
 25 inconsistent with her testimony of debilitating pain and exertional limitations. Tr. 25. Medical
 26 evidence is a relevant factor in determining the severity of a claimant’s pain and its disabling
 27 effects. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); SSR 96-7p. “Contradiction
 28 with the medical record is a sufficient basis for rejecting the claimant’s subjective testimony.”

1 *Carmickle*, 533 F.3d at 1161; *see also Rollins*, 261 F.3d at 857 (“[s]ubjective pain testimony
2 cannot be rejected on the sole ground that it is not fully corroborated by objective medical
3 evidence.”).

4 In this case, the ALJ summarized Ms. Casserd’s medical record as follows: Ms. Casserd
5 had multiple surgeries in 2004 for a decompressive laminectomy with subsequent dural repair
6 and repair of a pseudomeningocele; MRIs showing hypertrophy at L4-L5 with stenosis at L3-L4
7 in 2005; and continued pain with good range of motion in her back and negative straight leg
8 raises in 2006. Tr. 25-26. In 2009, she had pain and fatigue but no weakness or sleep
9 interruption; limited range of motion in her lumbar spine; and normal strength, reflexes and
10 sensation in her lower extremities; however, an x-ray showed arthritis in her lumbar spine with
11 slight scoliosis at L3 and slight subluxation between L4 and L5. *Id.* A 2009 MRI showed
12 “grossly preserved vertebral heights with degenerative changes at all levels”; mild disc bulges at
13 L1-L2, L2-L3, and L3-L4; mild to moderate central canal narrowing at L2-L3; moderate central
14 and foraminal narrowing at L3-L4; and moderate to severe central and foraminal narrowing at
15 L4-L5. Tr. 26. In subsequent examinations, Ms. Casserd displayed normal gait and full motor
16 strength in her lower extremities; her reflexes were normal; she had normal range of motion, a
17 steady gait, negative straight leg raises and negative Romberg tests; but she continued to describe
18 lower back pain, stiffness and soreness. *Id.*

19 The ALJ fails to explain why the medical findings she summarized were inconsistent
20 with Ms. Casserd’s testimony of debilitating pain, or why she found the medical history “appears
21 to have no significant barrier to sedentary work besides her own belief that her pain precludes
22 such activity.” Tr. 27. On this record, the Court cannot say the ALJ provided clear and
23 convincing reasons for finding Ms. Casserd’s description of pain not credible. Not only did the

1 ALJ fail to provide *any* reasoning in linking the medical evidence to her conclusions, but it is
 2 entirely unclear as to how the objective medical evidence does not in fact corroborate Ms.
 3 Casserd's allegations. *See Rollins*, 261 F.3d at 857. The finding is unsupported in the record
 4 and contradicted by record evidence.³

5 **3. *Inconsistent Daily Activities***

6 At her hearing, Ms. Casserd testified she could not stand or sit for two hours due to hip,
 7 knee, foot, and back pain without significant need for recovery. Tr. 51. She testified her ideal
 8 job would be one where she could work from home and could lie down. Tr. 52. She also
 9 testified she cannot drive because sitting in the car is too painful, she cannot lift more than ten
 10 pounds at a time, and that she takes pain medication every day. Tr. 57, 62-64. She further
 11 testified she cares for a dog, cat, and two horses; she swims once per week; rides her horse every
 12 1-2 weeks for thirty to ninety minutes; shops for groceries; and occasionally rides a bike for ten
 13 minutes at a time. Tr. 61-62, 64-68, 70. In a February 11, 2011 Function Report, Ms. Casserd
 14 reported that her "chronic health conditions severely limit what [she] can do." Tr. 270. She
 15 reported severe back pain made her unable to drive, sit, stand, or walk. Tr. 263 ("I'm unable to
 16 drive, sit or stand still [illegible] fibromyalgia"), 268 ("I'm in so much pain I can't tolerate
 17 situations where I have to sit, drive, stand still or type."). She indicated she can drive only 1-2
 18 times per week, and for thirty minutes at a time, with pain, and that she shops for groceries once
 19 per week for one hour. Tr. 266. She also reported that her medications made it hard for her to
 20
 21

22 ³ The Court notes that, in her section regarding Ms. Casserd's credibility, the ALJ also discusses
 23 Ms. Casserd's psychological findings and concludes her "mental impairments do not impose
 significant barriers to working." Tr. 26-27. It appears these findings are better suited to a
 discussion at step two because there is no discussion that is relevant to Ms. Casserd's credibility.
 Accordingly, the Court does not address the matter in that context.

1 concentrate, and that she could only pay attention for one minute. Tr. 268.⁴

2 The ALJ found Ms. Casserd's testimony not credible because her complaints of disabling
 3 symptoms and limitations were inconsistent with her daily activities. Tr. 27. Specifically, the
 4 ALJ found Ms. Casserd's descriptions of feeding and caring for two horses, riding one horse
 5 every other week, making her own meals, grocery shopping, swimming, and occasionally riding
 6 bicycles, was contrary to her complaints. *Id.*

7 The Ninth Circuit "has repeatedly asserted that the mere fact that a plaintiff has carried
 8 on certain daily activities, such as grocery shopping, driving a car, or limited walking for
 9 exercise, does not in any way detract from her credibility as to her overall disability. One does
 10 not need to be 'utterly incapacitated' in order to be disabled." *Vertigan v. Halter*, 260 F.3d 1044,
 11 1050 (9th Cir. 2001) (*quoting Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)). However, a
 12 claimant's reported daily activities can form the basis for an adverse credibility determination if
 13 they consist of activities that contradict the claimant's "other testimony"; or that are transferable
 14 to a work setting." *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007); *Smolen v. Chater*, 80 F.3d
 15 1273, 1284 n.7 (9th Cir. 1996); *see also Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998)
 16 ("Only if the level of activity were inconsistent with Claimant's claimed limitations would these
 17 activities have any bearing on Claimant's credibility").

18 The ALJ's adverse credibility determination was not erroneous, because Ms. Casserd's
 19 daily activities contradict her testimony regarding her disabling pain and limitations. The
 20 activities Ms. Casserd described are inconsistent with her allegations that she is unable to tolerate

21 ⁴ In her briefing, Ms. Casserd attempts to retreat from the severity of the physical limitations she
 22 endorsed at her hearing and in her function report, arguing instead that she cannot sit for six
 23 hours as contemplated in the definition of sedentary work, or that she cannot sit "for more than
 four hours in an 8 hour workday." *See* Dkt. 14 at 8, 11, 14, 18. In evaluating the ALJ's
 credibility determination, however, the Court's inquiry is limited to the record before the
 Commissioner, not Ms. Casserd's revised testimony as presented in her briefing.

1 situations where she has to sit, drive, or stand still due to pain in her back, knees, hips, and feet.

2 Ms. Casserd's activities of daily living are similar to those in *Vertigan*, who went to the
3 grocery store, shopped, walked about an hour, got together with friends, played cards, read,
4 swam, watched television, did physical therapy, and exercised. *Vertigan*, 260 F.3d. at 1049-50.
5 In *Vertigan*, the Court reversed the ALJ's adverse credibility determination, finding only a
6 scintilla of evidence supported the ALJ's conclusion that the claimant lacked credibility about
7 her pain. *Id.* In this case, Ms. Casserd's activities are clearly inconsistent with her claimed
8 limitations. It was not unreasonable for the ALJ to find Ms. Casserd's daily activities
9 irreconcilable with her testimony stating she was "unable to," or "couldn't tolerate," sitting,
10 driving, walking, or standing.

11 But even if the Court were to find Ms. Casserd's minimal activities of shopping,
12 preparing simple meals, and minimal exercise such as walking, swimming and riding a bike for
13 short amounts of time were consistent with her testimony regarding physical limitations and
14 pain, the Court cannot say the ALJ erred in finding riding horses for 30 to 90 minutes at a time
15 was inconsistent with her alleged limitations and pain. Although Ms. Casserd's explanation that
16 her horseback riding was for therapeutic purposes may be a reasonable interpretation of the
17 record, the ALJ's conclusion was also reasonable. "Where the evidence is susceptible to more
18 than one rational interpretation, it is the ALJ's conclusion that must be upheld." *Morgan v.*
19 *Comm'r, Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999) (citing *Andrews*, 53 F.3d at 1041).

20 In short, the ALJ provided clear and convincing reasons supported by substantial
21 evidence in the record to discount Ms. Casserd's credibility on the basis of her inconsistent daily
22 activities.

23 **4. *Psychological cause of pain***

1 The Court finds the ALJ's final reason for her adverse credibility determination
2 perplexing and lacking in logic, and therefore not clear and convincing. The ALJ asserts Ms.
3 Casserd's only barrier to sedentary work is her own belief that her pain precludes her from such
4 activity. Tr. 27. In this example, the ALJ bases the statement on the "recommendations of
5 rehabilitative consultant Dr. Boudreux." *Id.* The ALJ notes that Dr. Boudreux "recommended
6 that the claimant begin an occupational conditioning program, in which the claimant would
7 condition herself over time to tolerate gainful employment." Tr. 27. The ALJ presents no
8 conclusions flowing from this statement and the Court declines to speculate as to what they may
9 be.

10 The ALJ then suggests Ms. Casserd's pain is "non-physiologic." *See* Tr. 27 ("In July
11 2011, she requested an increase to her previous [opiate] dosage level, stating that a recent bout of
12 depression was causing her additional pain. Her claim that her depression is a contributory cause
13 of musculoskeletal pain is demonstrative of the non-physiologic nature of the claimant's pain
14 complaints."). The ALJ asserts:

15 [a]s discussed above, the claimant's PAI has shown an elevated
16 somatization scale, as well as a self-image that is largely
17 influenced by a belief that she is handicapped (11F). In summary,
18 although I find that the claimant's pain and opiate use does likely
19 impaired [sic] her concentration to a moderate degree, the
claimant's medical record and reported activities do not support
the claimant's firmly held belief that she is unable to work on a
full-time basis due to pain and musculoskeletal dysfunction.

20 Tr. 28.

21 The ALJ's statements betray her flawed belief that pain symptoms without discrete
22 physical causes cannot be medically valid. The ALJ's logic is erroneous and implicates her
23 analysis at other steps of the five-step evaluation process. At step two, the ALJ discussed
fibromyalgia, noting Dr. Boudreux "suggested a diagnosis," but ultimately found the

1 impairment was not medically established. Tr. 22. Dr. Boudreux, among others, also
2 diagnosed chronic pain. Tr. 358. The ALJ does not consider chronic pain at step two. Ms.
3 Casserd's medical records are rife with complaints of pain, with evidence suggesting "many
4 visits" for pain since 2000. *Id.* At a minimum, the record supports a finding that Ms. Casserd's
5 pain has multiple sources — perhaps both physical and psychological — but the fact that pain
6 has multiple sources does not invalidate it, or Ms. Casserd's credibility.⁵ On the other hand, if
7 the ALJ is simply trying to reiterate her belief that Ms. Casserd's activity level belies her
8 complaints of pain — which is, to be sure, unclear — she fails. There is simply no logic in
9 proving the point by stating pain symptoms are non-physiologic in nature, because the
10 observation only suggests the pain is present with or without physical activity, not that the level
11 of physical activity proves an absence of pain. Accordingly, as far as the Court can tell, the
12 ALJ's final argument adds nothing beyond her attempt to discredit Ms. Casserd's credibility for
13 the other reasons discussed above.

14 Because some of the ALJ's reasons supporting her adverse credibility finding are invalid,
15 the Court must determine whether the ALJ's reliance on them was harmless error. The inclusion
16 of improper reasons among other proper reasons to discount a claimant's credibility does not
17 "negate the validity" of the ALJ's credibility determination. *Carmickle*, 533 F.3d at 1163
18 (quoting *Batson v. Comm'r, Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004)). An error is
19 harmless where the ALJ's remaining reasoning and ultimate credibility determination are
20 adequately supported by substantial evidence in the record. *Id.* at 1162-63. Here, the ALJ's
21 decision to discount Ms. Casserd's credibility is supported by a valid reason and substantial
22 evidence in the record. The Court thus concludes the ALJ's error is harmless and will not disturb

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⁵ The Court notes that neither the ALJ, nor the record, suggest evidence of malingering.

1 the her assessment of Ms. Casserd's credibility.

2 **B. The ALJ Did Not Err in Evaluating the Medical Opinion Evidence**

3 Ms. Casserd next argues the ALJ erred in discounting the opinions of treating doctor
4 Arne Anderson, M.D., and examining doctor Marie Boudreaux, M.D. "Although a treating
5 physician's opinion is generally afforded the greatest weight in disability cases, it is not binding
6 on an ALJ with respect to the existence of an impairment or the ultimate determination of
7 disability." When a treating or examining doctor's opinion is not contradicted by another doctor,
8 the ALJ may reject the opinion only for "clear and convincing" reasons. *Lester v. Chater*, 81
9 F.3d 821, 830 (9th Cir. 1988). Where a treating or examining doctor's opinion is contradicted by
10 that of another doctor, it may not be rejected without "specific and legitimate reasons based on
11 substantial evidence in the record." *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995).
12 "The ALJ can meet this burden by setting out a detailed and thorough summary of the facts and
13 conflicting clinical evidence, stating his interpretation thereof, and making findings." *Magallanes v.*
14 *Bowen*, 881 F.2d 747, 751 (9th Cir. 1989); *accord Andrews*, 53 F.3d at 1043. Rather than merely
15 stating his conclusions, the ALJ "must set forth his own interpretations and explain why they, rather
16 than the doctors', are correct." *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citation
17 omitted).

18 **1. Arne Anderson, M.D.**

19 Ms. Casserd challenges the ALJ's rejection of a January 2012 Medical Source Statement
20 by Arne Anderson, M.D. Dkt. 14 at 13-18. Dr. Anderson opined Ms. Casserd could
21 occasionally lift up to 20 pounds but could not frequently lift any weight; she could
22 sit/stand/walk for 30 minutes without interruption and for a total of three hours in an 8-hour
23 workday (and would otherwise need to lay down); she could occasionally reach, handle, finger,

1 feel and push/pull with either hand; she could occasionally operate foot controls; she could never
2 climb or balance but could occasionally engage in other postural activities; and she could never
3 tolerate unprotected heights or operate a motor vehicle but could occasionally tolerate vibrations
4 and moving mechanical parts. Tr. 637-42. Dr. Anderson also opined Ms. Casserd could shop,
5 travel without assistance, ambulate without a wheelchair, walk a block at a reasonable pace,
6 climb a few steps, prepare simple meals, and deal with paper files. Tr. 642.

7 The ALJ found the opinion was insufficiently supported by the doctor's findings and
8 other findings in the medical record and thus appeared to be based on Ms. Casserd's subjective
9 complaints; it was internally inconsistent, it was inconsistent with Ms. Casserd's daily activities,
10 and Dr. Anderson was improperly advocating for Ms. Casserd; accordingly, she assigned the
11 opinion "little weight." Tr. 31.

12 A treating physician's opinion need not be given controlling weight when it is
13 "conclusory, brief, and unsupported by the record as a whole . . . or by objective medical
14 findings." *Batson*, 359 F.3d at 1195. The ALJ found Dr. Anderson's opined limitations were
15 implausible because evidence of Ms. Casserd's physical examinations (including one by Dr.
16 Anderson in 2010) demonstrated she had normal range of motion, sensation, and reflexes; and
17 full range of motion in her lumbar spine. Tr. 31 (*citing* Tr. 382, 388, 604, 624, 643-49). The
18 Court notes that two of the examinations relied upon by the ALJ predate Ms. Casserd's alleged
19 onset date by 3-5 years. *See* Tr. 604, 624. Evidence that predates the alleged period of disability
20 is of limited relevance. *Carmickle*, 533 F.3d at 1165. Permitting the use of evidence predating
21 disability would, in most cases, conflict with evidence after a disability onset date and would
22 merely invite abuse.

23 As Ms. Casserd observes, the ALJ errs in linking, without explanation, range of motion

1 findings with exertional limitations such as standing/walking/sitting and lifting/carrying. *See*
 2 Dkt. 14 at 4. Additionally, the evidence the ALJ relies upon indicates Ms. Casserd stood during
 3 her exams, further supporting her allegations regarding sitting limitations. *See* Tr. 388 (“stands
 4 through most of the visit”); *see also* Tr. 652 (“She stands in the waiting room and only sits
 5 briefly during the examination.”). Further, Dr. Anderson’s 2012 opinion was not based on his
 6 findings regarding strength, reflexes, and range of motion. Rather, the opinion was based upon
 7 imaging showing “post surgical and degenerative changes at L3-4 and L4-5.”⁶ Tr. 637-42.
 8 Accordingly, the ALJ’s assertion that Dr. Anderson’s opinion “provide[s] no examination
 9 findings or other evidence as support” is also not supported by substantial evidence. *See* Tr. 31.
 10 An ALJ’s decision will be overturned “only if it is not supported by substantial evidence or is
 11 based on legal error.” *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). In this case, the
 12 ALJ erred in rejecting Dr. Anderson’s opinion as inconsistent with his examination findings and
 13 the examination findings of other doctors, and there is nothing to suggest Dr. Anderson
 14 improperly relied solely upon Ms. Casserd’s subjective complaints.

15 The ALJ also erred when she concluded Dr. Anderson had been acting as an advocate
 16 “for a finding of disability.” Tr. 31. Although the opinions may be favorable to Ms. Casserd,
 17 there is no evidence of actual impropriety. *See Lester*, 81 F.3d at 832 (*quoting Ratto v. Sec’y, Dept.*
 18 *of Health and Human Servs.*, 839 F.Supp. 1415, 1426 (D.Or.1993)) (“The Secretary may not assume
 19 that doctors routinely lie in order to help their patients collect disability benefits.”); *see, also, Nguyen*
 20 *v. Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996) (*citing Saelee v. Chater*, 94 F.3d 520, 523 (9th Cir.
 21

22 ⁶ In December 2011, Dr. Anderson stated “MRI scanning of the lumbar spine demonstrates
 23 postoperative changes and additional lumbar spondylosis with stenosis. This was done in 2009[. R]ecent x-rays show that she has some spondylolisthesis at L4-5 and L5-S1.” Tr. 634. This
 supports the conclusion that Dr. Anderson relied upon an MRI, rather than, as the ALJ contends,
 examination findings.

1 1996)) (the source of report is a factor that justifies rejection only if there is evidence of actual
2 impropriety or no medical basis for opinion). The ALJ points to a February 2011 email chain
3 between Ms. Casserd and Dr. Anderson, wherein the doctor agrees, at the request of Ms. Casserd, to
4 fill out disability paperwork on her behalf. Dr. Anderson cautions, however, that she “typically
5 put[s] people at capable of some activity so I would not say you are totally disabled but at the next
6 category up.” Tr. 559. The ALJ found this statement inconsistent with Dr. Anderson’s opinions, and
7 from that, concluded Dr. Anderson had been improperly acting as an advocate. Tr. 31. Evidence
8 demonstrating the doctor did not intend to find Ms. Casserd incapable of all activity is not evidence
9 of “actual impropriety.” The ALJ’s conclusion is nothing more than speculation.

10 Finally, the ALJ found Dr. Anderson’s medical source statement internally inconsistent
11 because, although he opined Ms. Casserd could never balance, operate a motor vehicle, or
12 sit/stand/walk for more than 30 minutes, the doctor also opined she could travel without
13 assistance, perform her own shopping, and ambulate without an assistive device. Tr. 31. An
14 ALJ may properly consider internal inconsistencies within and between a physician’s reports.
15 *Morgan*, 169 F.3d at 603. In challenging the ALJ’s finding, Ms. Casserd argues the definition of
16 “never” includes any amount of time up to 1/3 of an eight-hour workday, so “when Dr. Anderson
17 opined that Plaintiff was supposedly ‘never’ able to operate a motor vehicle, he was actually
18 saying that he did not believe Plaintiff was capable of operating a motor vehicle during as much
19 as one third of the time.” Dkt. 14 at 15. The argument is belied by the evidence.
20 “Occasionally,” as defined in the form completed by Dr. Anderson, includes “very little to one-
21 third of the time.” Tr. 637. Thus, “never” must be less than “very little,” *i.e.*, none. Even if Ms.
22 Casserd’s interpretation of this record was reasonable, the ALJ’s was also reasonable.
23 Accordingly, it must be upheld. *See Morgan*, 169 F.3d at 599.

1 Although the ALJ’s treatment of Ms. Casserd’s credibility is not error-free, the Court
2 finds any error would not negate the validity of the overall credibility determination and thus is
3 harmless. *See Carmickle*, 533 F.3d at 1162, 1163 n.4 (the key issue is “whether the ALJ’s
4 underlying decision remains supported, in spite of any error, and not whether the ALJ would
5 necessarily reach the same result on remand.”). Thus, the Court recommends affirming the
6 ALJ’s evaluation of Dr. Anderson’s opinion.

2. *Marie Boudreaux, M.D.*

8 Ms. Casserd next challenges the ALJ's rejection of the March 2011 opinion of examining
9 doctor Marie Boudreaux, M.D. Dr. Boudreaux opined Ms. Casserd was capable of lifting up to
10 ten pounds; she could stand and walk for less than two hours in an eight-hour day; she could sit
11 for less than four hours per day when alternating between sitting and standing; she could never
12 climb, balance, stoop, crouch, kneel or crawl; and she had limited reaching ability. Tr. 471-75.
13 She based her opinions on Ms. Casserd's history of pain and current pain, and her self-reports.
14 *Id.* The ALJ accepted the finding that Ms. Casserd could not lift and carry over ten pounds on a
15 regular basis, but assigned "limited weight" to the remainder of Dr. Boudreaux's opinion
16 because she did not find Ms. Casserd's self-reports of physical limitations to be credible. Tr. 29.
17 The Commissioner contends an ALJ properly rejects an opinion based to a large extent on self-
18 reports that were properly found not credible. Dkt. 15 at 7, 10 (*citing Tommasetti v. Astrue*, 533
19 F.3d 1035, 1041 (9th Cir. 2008)). The Court agrees. As discussed above, the ALJ properly
20 discounted Ms. Casserd's testimony. Accordingly, the Court recommends affirming the ALJ's
21 evaluation of the opinion of Dr. Boudreaux.

CONCLUSION

23 For the foregoing reasons, the Court recommends that the Commissioner's decision be

1 **AFFIRMED** and recommends the case be **DISMISSED** with prejudice.

2 A proposed order accompanies this Report and Recommendation. Objections, if any, to
3 this Report and Recommendation must be filed and served no later than **September 2, 2014**. If
4 no objections are filed, the matter will be ready for the Court's consideration on **September 3,**
5 **2014**. If objections are filed, any response is due within 14 days after being served with the
6 objections. A party filing an objection must note the matter for the Court's consideration 14
7 days from the date the objection is filed and served. Objections and responses shall not exceed
8 twelve pages. The failure to timely object may affect the right to appeal.

9 DATED this 18th day of August, 2014.



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11 BRIAN A. TSUCHIDA
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13 United States Magistrate Judge
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